

Regulatory Reaction to Industry Comments

March 25, 2003

Introduction

The industry has offered comments to OPS on several aspects of our proposed inspection support tools, including:

- The structure of the inspection-support protocols,
- Specific questions and program characteristics within the protocols,
- Definitions important to common understanding of the provisions and intent of the OQ Rule.

OPS, along with our state regulatory partners, has completed an initial evaluation of the industry comments, and offers the reaction presented below. We will present this reaction for discussion during the Public Meeting to be held in Phoenix on March 25, 2003 so that we may completely and clearly understand the industry position, and can proceed with finalization of the protocols.

Protocol Structure

Industry has presented a reorganization of the inspection-support protocols which was intended to make the protocols easier to understand. The Table below shows a comparison of the initial OPS structure, the suggested industry revision, and the seven elements explicitly called out in the OQ Rules.

Table 1 OQ Protocol Structure Comparison

| Initial OPS Structure | Suggested Industry Structure | Elements of OQ Rule |
|--|--|--|
| 1. Document Program Plan | 1. The Written OQ Program | 1. Identify Covered Tasks |
| 2. Identify Covered Tasks & Evaluation Methods | 2. Identification of Covered Tasks & Evaluation Criteria | 2. Evaluate & Qualify People |
| 3. Identify Persons Performing Covered Tasks | 3. Reevaluation | 3. Provisions for Non-Qualified Persons to Perform Covered Tasks |
| 4. Evaluate People on Covered Tasks | 4. Evaluation Methods | 4. Evaluate Individuals if Contributed to Incident or Accident |
| 5. Periodic Reevaluation | 5. AOCs | 5. Evaluate Individuals if Believed not Qualified |
| 6. Monitor Program Performance | 6. Program Management | 6. Communicate Changes |
| 7. Maintain Program Records | 7. Training | 7. Reevaluation Interval & Process |
| 8. Manage Change | 8. Documentation & Records | |
| | 9. Program Quality Management | |
| | 10. Management of Change | |

Comparison among these candidate protocol structures reveals that there is surprising similarity between the initial OPS protocol structure and that proposed by industry, as well as not-so-surprising differences between these two and the seven element structure of the rule. Major differences between the industry proposal and the initial OPS structure are summarized below:

- OPS combined Covered Task Identification with Evaluation Method, whereas industry suggested separating these elements;
- OPS treated the Identification of Persons Performing Covered Tasks separately, while industry suggested integrating it within Program Management and Documentation and Records;
- OPS separated out the actual evaluation process, whereas industry recommended integrating it within Evaluation Methods and AOCs;;
- Industry separated out Periodic Reevaluation, while industry suggested it be integrated with a new element Program Quality Management;
- OPS integrated the documentation questions into the elements where they seemed to best fit, whereas industry suggested consolidating these questions in the new element Documentation and Records;
- OPS integrated treatment of AOCs into the Evaluation element, whereas industry suggested separating this topic out as AOCs.

While the resolution of these comments has not been finalized, we currently have chosen not to significantly restructure the protocol set. We are, however, continuing to evaluate whether incorporation of some organizational suggestions will make the protocols easier to understand.

Specific Protocol Questions

Industry comments on protocol questions fall into several categories.

- Questions considered to be clearly within the scope of the rule with no comments or with suggested wording changes,
- Questions considered to be outside the scope of the rule but acceptable as is or with wording changes,
- Questions considered to be either inside or outside the scope of the rule that require further discussion,
- Questions considered to be outside the scope of the rule.

The regulatory group plans to address the first two categories of comments, and requires no further discussion at this time. We expect that the industry group will address the third category during the meeting in Phoenix, and we will seek to understand the industry position so that we can make any revisions we consider to be appropriate.

Some additional discussion on questions in the fourth category would be useful, and some comments will be addressed directly either by wording changes or by deletion of questions. However, we have determined that most of the questions considered by the

industry to be outside the scope of the rule are necessary for our understanding of operator OQ Programs. Because we understand the industry sensitivity to protocol questions that seem to be beyond the scope of the rule, we have attempted to carefully differentiate between questions related to prescriptive requirements of the rules and those exploring operator program characteristics. This differentiation will be addressed in a “Statement” we intend to build into the cover sheet of the protocols. We will discuss the wording of this cover “Statement” during the Phoenix meeting. The draft statement reads as follows:

Nature of the Rule

The Operator Qualification (OQ) Rule has been characterized as a performance-based rule, in spite of the fact that it requires no measurement of the impact of its implementation on performance. In reality it is a management-based rule since it does require implementation of an OQ Program that either includes or implies the need for several management practices. Inspection against provisions of a management-based rule is different from inspection of a purely prescriptive rule. A management-based rule provides flexibility in how operators evaluate, justify and change their practices to satisfy the intent of the rule within their unique operating environment.

The ultimate proof of the effectiveness of operator OQ programs will be demonstrated through continuing review of performance trends, which should be carried out by the industry and monitored by regulators. Regulatory bodies cannot await performance results to demonstrate the effectiveness of operator programs. Therefore, inspection of operator implementation of the OQ Rule must include not only evaluation of compliance with its prescriptive provisions, but also evaluation of the completeness and anticipated effectiveness of the documented approaches designed to qualify individuals and to ensure they remain qualified.

The Role of Protocols

This document contains the protocols to be used to support inspectors in inspecting OQ Programs. The regulatory approach to inspecting compliance with provisions of this rule must ensure that the issues prompting the rule are addressed by operator programs. This objective will be accomplished by rigorously inspecting compliance with the prescriptive requirements of the rule, and also by evaluating the characteristics of the programs operators have implemented to satisfy these requirements.

The protocols have been structured into “Protocol Questions,” most of which are coupled directly with prescriptive requirements of the rule, as indicated by the designation “Enforceable” following the question, and subordinate “Guidance”. This guidance presents characteristics that the regulator would typically expect to find in an effective OQ Program, and is consistent with the intent of the Rule. Some, all, or none of these characteristics may be appropriate depending on factors unique to each protocol, the operator's OQ Program, and pipeline assets. Operators should be prepared to demonstrate that their programs address each of these characteristics or to describe how their program will be effective in their absence.

Should the inspection process reveal violations of prescriptive requirements of the rule, regulators will take appropriate enforcement actions. Should deficiencies be identified in how operators address program characteristics, the findings will be formally communicated to the operator for future discussion and disposition.

Definitions

Industry has reviewed the initial set of definitions offered by regulators at the Houston Public Meeting and has provided comments. It is clear that many of these definitions are very important to a shared understanding of the provisions of the OQ Rules. In addition, many of the definitions relate to the resolution of the thirteen issues on which much earlier discussion has focused. As part of our effort to finalize the definitions and to resolve the thirteen issues, the regulators would like to discuss several of the definitions for which further clarification of the industry suggestions is needed. Most of these definitions are best discussed in the context of the thirteen issues. This discussion will be led by industry during item four on the agenda. These definitions include:

- Benchmark (related to the issue on Noteworthy Practices);
- Direct Observation (related to the issue on Control of Non-Qualified Persons Performing Covered Tasks);
- Emergency Response (related to issue of the same name);
- Evaluator (related to the issue on Evaluator Credentials);
- Excavation or Damage Prevention (related to the issue on Additional Covered Tasks);
- Knowledge, Skills and Ability (KSA) (related to the issue of the same name);
- Maintenance and New Construction (related to the issue on differentiation between these terms)